

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>KRXA, LLC</b>	)	File Nos.: EB-IHD-13-00012620,
	)	EB-10-IH-0226
Licensee of Station KRXA(AM), Carmel Valley,	)	
California	)	NAL/Acct. No.: 201432080019
	)	
	)	FRN: 0020408985
	)	
	)	Facility ID No.: 9849

**ORDER**

**Adopted: April 11, 2014**

**Released: April 14, 2014**

By the Acting Chief, Enforcement Bureau:

1. In this Order and Consent Decree, we settle allegations that radio station KRXA(AM) violated the sponsorship identification laws and the indecency laws. The sponsorship identification laws require broadcasters to air announcements that identify when they are being paid to broadcast material and who is paying them. These laws are based on the principle that listeners and viewers have the right to know who is trying to persuade them. The indecency laws generally prohibit the broadcast of indecent material between 6:00 a.m. and 10:00 p.m. Specifically, in this case, the Commission received and investigated a complaint that the station violated the sponsorship identification laws by broadcasting a regularly scheduled call-in program without disclosing that the host had paid the station to appear, and that it violated the indecency laws based on language used by that show's host. For purposes of the settlement, KRXA, LLC (KRXA or Licensee), licensee of KRXA(AM), admits that its broadcast violated the sponsorship identification laws and the indecency laws. KRXA is selling the station to a non-profit broadcaster and is exiting the broadcast business. Based on demonstrated financial hardship, KRXA will pay \$15,000 to resolve the allegations. If the station is not sold, KRXA will implement a three-year compliance plan.

2. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) and KRXA, the licensee of Station KRXA(AM), Carmel Valley, California (Station). The Consent Decree resolves and terminates the Bureau's investigation into whether the Licensee violated Section 1464 of Title 18, United States Code, and Section 73.3999 of the Commission's rules (Rules)<sup>1</sup> by broadcasting indecent, profane, or obscene material on the Station, and/or violated Section 317 of the Communications Act of 1934, as amended (Act), and Section 73.1212 of the Rules<sup>2</sup> pertaining to sponsorship identification.

3. The Bureau and the Licensee have negotiated the terms of the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

<sup>1</sup> 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

<sup>2</sup> 47 U.S.C. § 317; 47 C.F.R. § 73.1212.

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest will be served by adopting the Consent Decree and terminating the investigation.

5. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether the Licensee possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,<sup>3</sup> and Sections 0.111 and 0.311 of the Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against the Station and/or the Licensee related to the above-captioned investigation that are currently pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both First Class U.S. Mail and Certified Mail to Harold S. Ginsberg, KRXA, LLC, 495 Elder Avenue, Suite 8, Sand City, California 93955.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Acting Chief, Enforcement Bureau

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<sup>3</sup> See 47 U.S.C. §§ 154(i), 154(j), 503(b).

<sup>4</sup> See 47 C.F.R. §§ 0.111, 0.311.

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<b>KRXA, LLC</b>	)	
	)	NAL/Acct. No.: 201432080019
Licensee of Station KRXA(AM), Carmel Valley,	)	
California	)	FRN: 0020408985
	)	
	)	Facility ID No.: 9849

**CONSENT DECREE**

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) and KRXA, LLC, by their authorized representatives, and Harold S. Ginsberg, individually, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether KRXA, LLC violated Section 1464 of Title 18, United States Code, and Section 73.3999 of the Commission's rules (Rules),<sup>1</sup> by broadcasting indecent, profane, or obscene material over the above-captioned station, and/or violated Section 317 of the Communications Act of 1934, as amended (Act), and Section 73.1212 of the Rules<sup>2</sup> pertaining to sponsorship identification.

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) "Adopting Order" means the Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Assignment Application" means the Application for Consent to Assignment of the License of Station KRXA(AM), Carmel Valley, California, filed with the Commission on April 29, 2013, File No. BAL-20130429ACG.
  - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (f) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which each Commission licensee, including KRXA, is subject by virtue of it being a Commission licensee, including but not limited to Section 317 of the Act and Section 73.1212 of the Rules.
  - (g) "Complaint" means the third-party Complaint received by, or in the possession of, the Bureau and alleging violations of Section 1464 of Title 18, United States

<sup>1</sup> 18 U.S.C. § 1464; 47 U.S.C. § 73.3999.

<sup>2</sup> 47 U.S.C. § 317; 47 C.F.R. § 73.1212.

Code, Section 73.3999 of the Rules, Section 317 of the Act and/or Section 73.1212 of the Rules, as described in this Consent Decree at paragraph 5.<sup>3</sup>

- (h) “Consideration” means anything of value, including but not limited to, cash, checks, salaries, fees, commissions, loans, management fees, consulting fees, honoraria, per diem allowances, payments of third-party invoices, travel and/or hotel expenses, meals, gifts, bonuses, services, purchases of, or promises to purchase, advertising time, and/or any other things of value, from any source, or given by third parties, to another.
- (i) “Contingent Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 15.
- (j) “Covered Employees” means all employees and agents of the Licensee who perform, or supervise, oversee, and/or manage the performance of, duties that relate to the Licensee’s responsibilities under the Sponsorship Identification Laws and Indecency Laws, including those employees and agents who serve as on-air talent and/or materially participate in the on-air broadcast of program material and/or in the making of programming decisions, as well as their supervisory employees and agents.
- (k) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (l) “Harold S. Ginsberg” means that certain individual who controls 100 percent of the votes of KRXA, LLC, is an Officer and Member of the Licensee, and is General Manager of the Station; it also means any entity, other than KRXA, for which that same individual controls 100 percent of the governing vote.
- (m) “Indecency Laws” means, individually or collectively, Section 1464 of Title 18, United States Code, Section 73.3999 of the Rules and the decisions and orders of the Commission interpreting these provisions.
- (n) “Investigation” means the investigation commenced by the Bureau’s July 22, 2013, Letter of Inquiry<sup>4</sup> regarding whether KRXA violated the Indecency Laws and/or Sponsorship Identification Laws.
- (o) “KRXA” or “Licensee” means KRXA, LLC, including all of its subsidiaries and affiliates, and its predecessors-in-interest and, if a Non-Consummation Event occurs, its successors-in-interest.
- (p) “Non-Consummation Date” means the date on which a Non-Consummation Event occurs.
- (q) “Non-Consummation Event” means any of the following events: (1) the Licensee notifies the Commission that it does not intend to consummate the assignment of the Station’s license to El Sembrador Ministries, as proposed in the Assignment Application; (2) the Commission’s consent to assign the Station’s license to El Sembrador Ministries lapses or expires prior to the parties’ consummation of the assignment; or (3) the Assignment Application is dismissed or denied by the Commission.

<sup>3</sup> See Complaint, No. 09-WB14175758 (Apr. 9, 2009) (on file in EB-10-IH-0226 and EB-IHD-13-00012620) (Complaint).

<sup>4</sup> See Letter from Anjali K. Singh, Assistant Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to KRXA, LLC (July 22, 2013) (on file in EB-10-IH-0226 and EB-IHD-13-00012620).

- (r) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by KRXA to implement the Contingent Compliance Plan.
- (s) “Parties” means Harold S. Ginsberg, KRXA, and the Bureau, each of which is a “Party.”
- (t) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (u) “Sponsored Broadcast” is a matter transmitted by a broadcast station that is aired in exchange for Consideration that is “directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, “ including, but not limited to the types of broadcasts covered by Section 73.1212(f) of the Rules.<sup>5</sup>
- (v) “Sponsorship Identification Laws” means, individually or collectively, Section 317 of the Act, Section 73.1212 of the Rules<sup>6</sup> and the decisions and orders of the Commission interpreting these provisions.
- (w) “Station” means Station KRXA(AM), Carmel Valley, California (Facility ID No. 9849).

## II. BACKGROUND

3. Section 1464 of Title 18 of the United States Code, prohibits the utterance of “any obscene, indecent or profane language by means of radio communication.”<sup>7</sup> In addition, Section 73.3999 of the Rules provides that radio and television stations shall not broadcast obscene material at any time<sup>8</sup> and, consistent with a subsequent statute and court case, shall not broadcast indecent material between 6:00 a.m. and 10:00 p.m.<sup>9</sup> These provisions are primarily intended to minimize the risk that children will be exposed to indecent material.

4. The Sponsorship Identification Laws establish the general obligation of a broadcast station to air sponsorship identification announcements whenever any “money, service or other valuable consideration” is paid or promised to the station for the broadcast of program material.<sup>10</sup> The Commission has noted that the Sponsorship Identification Laws are “grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them”<sup>11</sup> and has warned that it would take enforcement action against broadcast stations and cable operators that did not comply with these disclosure requirements.<sup>12</sup>

5. The Bureau received a Complaint alleging that, on April 4, 2009, Station KRXA(AM)

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<sup>5</sup> 47 C.F.R. § 73.1212(f). See 47 U.S.C. § 317.

<sup>6</sup> See *supra* note 2.

<sup>7</sup> 18 U.S.C. § 1464.

<sup>8</sup> 47 C.F.R. § 73.3999.

<sup>9</sup> See *id.*; Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992) (setting the safe harbor of 10:00 p.m. to 6:00 a.m. for the broadcast of indecent material); *Action for Children’s Tel. v. FCC*, 58 F.3d 654, 656 (D.C. Cir. 1995) (*en banc*) (affirming restrictions prohibiting the broadcast of indecent material between the hours of 6:00 a.m. and 10:00 p.m.), *cert. denied*, 516 U.S. 1072 (1996).

<sup>10</sup> 47 U.S.C. § 317(a)(1). See also 47 C.F.R. § 73.1212(a).

<sup>11</sup> *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593, 8593–94 (2005).

<sup>12</sup> See, e.g., *id.* at 8593.

aired a regularly scheduled program “that masquerades as traditional programming” without providing the required sponsorship announcement identifying that it was in fact aired in exchange for money or other valuable consideration. The Complaint also alleged that the program’s host had repeatedly used vulgar language during the April 4, 2009, broadcast.<sup>13</sup> On April 29, 2013, the Licensee filed an application to assign the Station’s license to El Sembrador Ministries, a non-profit corporation.<sup>14</sup> The Licensee does not own or operate any stations other than the Station, and the Licensee will cease broadcasting pursuant to any license or authorization issued by the Commission upon grant and consummation of the proposed assignment.<sup>15</sup>

6. The Bureau issued a Letter of Inquiry (LOI) on July 22, 2013, regarding the issues raised in the Complaint.<sup>16</sup> In its responses to the LOI,<sup>17</sup> the Licensee confirmed that the Station received money from the program host as payment for the Station’s broadcast of the April 4, 2009, program referenced in the Complaint.<sup>18</sup> The Licensee also submitted with its September 2013 LOI Response a full recording of the April 4, 2009, broadcast of the program at issue and further admitted that the program’s host uttered the language referenced in the Complaint.<sup>19</sup> In addition, the Licensee stated that the complained-of program was terminated in March 2012, and that it is no longer broadcast on the Station.<sup>20</sup> The Licensee acknowledged the applicability of the Commission’s Indecency Laws and Sponsorship Identification Laws to the broadcast referenced in the Complaint,<sup>21</sup> but it asserted that the broadcast at issue did not violate the Indecency Laws or Sponsorship Identification Laws.<sup>22</sup> On the basis of the record, however, the Bureau contends that the Licensee violated these laws.

### III. TERMS OF AGREEMENT

7. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting

<sup>13</sup> See Complaint, *supra* note 3.

<sup>14</sup> See Application for Consent to Assignment of Broadcast Station License (FCC Form 314), File No. BAL-20130429ACG (Apr. 29, 2013). El Sembrador Ministries has filed a contingent application, with the Licensee’s consent, to modify the Station’s license by converting it to a non-commercial station. See Application for Modification of License (FCC Form 302-AM), File No. BMP-20130516AOS (May 16, 2013) (amendment filed June 24, 2013).

<sup>15</sup> See Declaration of Harold S. Ginsberg, General Manager, KRXA, LLC (Feb. 4, 2014) (on file in EB-10-IH-0226 and EB-IHD-13-00012620) (Supplemental Declaration).

<sup>16</sup> See LOI, *supra* note 4.

<sup>17</sup> The Licensee filed a partial response to the LOI, and prior to the date that the full LOI response was due, filed a request for an extension of time to respond to the LOI. See Letter from Harold S. Ginsberg, General Manager, KRXA, LLC, to Federal Communications Commission (July 25, 2013) (on file in EB-10-IH-0226 and EB-IHD-13-00012620) (July 2013 LOI Response); E-mail from Harold S. Ginsberg, General Manager, KRXA, LLC, to Gregory Simon, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (July 29, 2013, 8:36 EDT). The Bureau granted the requested extension of time, and the Licensee thereafter supplemented its LOI Response. See E-mail from Gregory Simon, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, to Harold S. Ginsberg (July 29, 2013, 14:09 EDT); Letter from Harold S. Ginsberg, General Manager, KRXA, LLC, to Federal Communications Commission (Sept. 2, 2013) (on file in EB-10-IH-0226 and EB-IHD-13-00012620) (September 2013 LOI Response).

<sup>18</sup> July 2013 LOI Response at 6; September 2013 LOI Response at 2 & Attachment at 99–101.

<sup>19</sup> July 2013 LOI Response at 1; September 2013 LOI Response at 1 & Recording.

<sup>20</sup> July 2013 LOI Response at 1–2; September 2013 LOI Response at 1.

<sup>21</sup> September 2013 LOI Response at 1.

<sup>22</sup> See *id.* at 1, 3–4.

Order.

8. **Jurisdiction.** The Licensee agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Licensee agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Licensee with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

11. **Voluntary Contribution.** The Licensee has provided evidence of financial hardship<sup>23</sup> and agrees that it will make a voluntary contribution to the United States Treasury in the amount of fifteen thousand dollars (\$15,000) within thirty (30) calendar days after the Effective Date. The Licensee shall also send electronic notification of payment to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Anjali.Singh@fcc.gov, Gregory.Simon@fcc.gov and Melanie.Godschall@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>24</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:<sup>25</sup>

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

<sup>23</sup> See Declaration of Harold S. Ginsberg, General Manager, KRXA, LLC (Jan. 1, 2014) (on file in EB-10-IH-0226 and EB-IHD-13-00012620); Supplemental Declaration.

<sup>24</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>25</sup> If the Licensee has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).



- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. **Successors and Assigns.** The Licensee agrees that if the proposed assignment of the Station's license to El Sembrador Ministries, as set forth in the Assignment Application, is not consummated, and the Licensee thereafter seeks to assign or transfer control of the Station's license to any entity other than El Sembrador Ministries, then the provisions of this Consent Decree shall be binding on the Licensee's successors, assigns, and transferees.

13. **Admission of Liability.** The Licensee admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions with respect to the April 4, 2009, broadcast of the program referenced in paragraph 5 of this Consent Decree violated the Commission's Indecency Laws and Sponsorship Identification Laws.

14. **Reporting Obligation with Respect to Applications Filed with the Commission.** In the event of the Commission's grant of approval of the Assignment Application, the Licensee and Harold S. Ginsberg agree to notify the Chief, Investigations and Hearings Division, Enforcement Bureau, whether the proposed assignment to El Sembrador Ministries is ultimately consummated. Such notification must take place within ninety (90) calendar days of public notice of grant of the Assignment Application and must be sent electronically to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Anjali.Singh@fcc.gov, Gregory.Simon@fcc.gov and Melanie.Godschall@fcc.gov. In the event a Non-Consummation Event occurs, the Licensee agrees to accept the additional compliance plan and compliance reporting obligations set forth in paragraph 15. The Licensee and Harold S. Ginsberg further agree to report the existence of the Adopting Order and Consent Decree in any future application for a Commission license, permit, certificate, or other authorization to which either is a party. The Licensee and Harold S. Ginsberg, at the time of such filing, shall deliver a copy of the application to the Chief, Investigations and Hearings Division, Enforcement Bureau, and shall notify the relevant licensing division of the Commission of this service and their duty to provide it.

15. **Contingent Compliance Plan and Reporting Obligations; Termination Date.** The Licensee agrees that, in the event a Non-Consummation Event occurs, it will appoint a Compliance Officer, develop and implement a Compliance Plan, and file periodic Compliance Reports, as set forth in this paragraph. Unless stated otherwise, the contingent requirements set forth in this paragraph shall expire thirty-six (36) months after the Non-Consummation Date. Harold S. Ginsberg agrees that if he is granted a Commission license and begins operation of a broadcast station within thirty-six (36) months of the Effective Date, he will appoint a Compliance Officer, develop and implement a Compliance Plan, and file periodic Compliance Reports, as set forth in this paragraph, including its subparts such that Harold S. Ginsberg shall be substituted in this paragraph and its subparts for Licensee and Effective Date shall be substituted in this paragraph and its subparts for Non-Consummation Date.

- A. **Contingent Compliance Officer.** Within thirty (30) calendar days after the Non-Consummation Date, the Licensee shall designate a senior manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and



ensuring that the Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Indecency Laws and Sponsorship Identification Laws prior to assuming his/her duties and shall commit to enforcing high standards with respect to the Indecency Laws and the Sponsorship Identification Laws to avoid violations.

- B. Contingent Compliance Plan. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within sixty (60) calendar days of the Non-Consummation Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Indecency Laws and Sponsorship Identification Laws, the Licensee shall implement the following procedures:
1. Operating Procedures. Within sixty (60) calendar days after the Non-Consummation Date, the Licensee shall establish Operating Procedures that all Covered Employees must follow to help ensure the Licensee's compliance with the Indecency Laws and the Sponsorship Identification Laws. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Compliance Officer, or a management-level employee of the Licensee directly supervised by the Compliance Officer, conducts a pre-broadcast review of any content that such employee reasonably believes, based on written Commission decisions that are legally in effect at the time of the broadcast, raises a substantial question under the Indecency Laws. The Operating Procedures also shall include internal procedures and policies specifically designed to ensure that the Licensee discloses the sponsorship status and the sponsor of broadcasts that are aired in exchange for valuable Consideration or otherwise require sponsorship identification, consistent with Section 317 of the Act and Section 73.1212 of the Rules. The Licensee also shall develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure the Licensee's compliance with the Indecency Laws and the Sponsorship Identification Laws. At a minimum, the Compliance Checklist shall require a multi-level review of Sponsored Broadcasts that air over the Station. All scripts of announcements shall be reviewed prior to broadcast for compliance with the Sponsorship Identification Laws by at least two station employees, one of whom shall be a management-level employee.
  2. Compliance Manual. Within sixty (60) calendar days after the Non-Consummation Date, the Compliance Officer (with assistance of counsel as appropriate) shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Indecency Laws and the Sponsorship Identification Laws and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Licensee's compliance with the Communications Laws. The Licensee shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. The Licensee shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
  3. Compliance Training Program. The Licensee shall establish and implement a Compliance Training Program on compliance with the Indecency Laws, the Sponsorship Identification Laws, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Indecency Laws and the Sponsorship Identification Laws under paragraph 16 of this Consent Decree

and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Non-Consummation Date. Any person who becomes a Covered Employee at any time after the initial Compliance Training Program is conducted shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Licensee shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

- (i) Hotline. The Compliance Officer shall maintain a hotline for employees to call the Compliance Officer to obtain advice on compliance with the Compliance Plan and report violations of the Compliance Plan.
  - (ii) Contractual Agreements. The Licensee will ensure that all contractual agreements with respect to Covered Employees shall include a contractual clause requiring compliance with the Indecency Laws and the Sponsorship Identification Laws.
  - (iii) Commitment to High Standards for Non-Indecency Program Content, the Identification of Program Sponsors and the Airing of Sponsored Content. The Licensee commits to enforcing high standards with respect to the Indecency Laws and the Sponsorship Identification Laws to avoid violations.
- 4. Sponsor Education. The Licensee will also implement and maintain a plan to educate prospective sponsors about the Indecency Laws, the Sponsorship Identification Laws, and appropriate sponsorship content and how it incorporates such sponsorship content in the messages that it prepares for the sponsor's approval and eventual broadcast. To that end, the Licensee will summarize the Indecency Laws and the Sponsorship Identification Laws for each client prior to accepting, in exchange for Consideration, any contract to air messages and/or other programming over the Station and preparing the message and/or programming for the sponsor's review. The Licensee will not broadcast any message, announcement, or programming that does not comply with the Indecency Laws and the Sponsorship Identification Laws.
- 5. Annual Report. The Compliance Officer shall submit reports to the Licensee concerning the Licensee's compliance with this Compliance Plan. The first such report shall be submitted within sixty (60) days of the Non-Consummation Date and additional reports shall be submitted at least annually thereafter.
- 6. Contingent Compliance Reports. In the event of a Non-Consummation Event and the required implementation of the Contingent Compliance Plan, as set forth in this paragraph, the Licensee shall file Compliance Reports with the Commission ninety (90) calendar days after the Non-Consummation Date, twelve (12) months after the Non-Consummation Date, twenty-four (24) months after the Non-Consummation Date, and thirty-six (36) months after the Non-Consummation Date.
  - (i) Each Compliance Report shall include a detailed description of the Licensee's efforts during the relevant period to comply with the terms and conditions of this Consent Decree, the Indecency Laws, and the Sponsorship Identification Laws. In addition, each Compliance Report shall include a certification by the

Compliance Officer, as an agent of and on behalf of the Licensee, stating that the Compliance Officer has personal knowledge that the Licensee (a) has established and implemented the Compliance Plan; (b) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (c) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 16 of this Consent Decree.

- (ii) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules<sup>26</sup> and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (iii) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Licensee, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (a) each instance of noncompliance; (b) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial action will be taken; and (c) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (iv) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Anjali.Singh@fcc.gov, Gregory.Simon@fcc.gov and Melanie.Godschall@fcc.gov.

16. **Reporting Noncompliance.** The Licensee shall report any noncompliance with the Indecency Laws, the Sponsorship Identification Laws, and with the terms and conditions of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Anjali.Singh@fcc.gov, Gregory.Simon@fcc.gov and Melanie.Godschall@fcc.gov.

17. **FCC Enforcement Actions.** If, as a result of possible future violation of the Indecency Laws and/or the Sponsorship Identification Laws at the Station, the Licensee receives a Notice of Apparent Liability or similar Bureau document proposing a forfeiture or contemplating license non-renewal or revocation, the Licensee shall:

- A. suspend each employee accused of violating the Indecency Laws and/or the Sponsorship

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<sup>26</sup> 47 C.F.R. § 1.16.

Identification Laws and undertake an investigation of each such incident;

- B. require that each such employee receive remedial training on the Indecency Laws and/or the Sponsorship Identification Laws and the Compliance Plan and successfully demonstrate to the Compliance Officer and Station management that he or she understands such regulations and policies before allowing such employee to resume his or her duties; and
- C. take disciplinary action, up to and including termination, against each employee who is materially involved in the violation of the Indecency Laws and/or the Sponsorship Identification Laws, if such violation results in a final adjudication by the Commission that the Licensee violated the Indecency Laws and/or the Sponsorship Identification Laws.

18. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 16–17 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

19. **Indecency Complaints, Section 73.1212 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating a complaint filed against the Licensee or its affiliates for alleged violations of the Indecency Laws, the Sponsorship Identification Laws, the Act, the Rules, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely upon the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by the Licensee with the Communications Laws.

20. **Waivers.** The Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

22. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Licensee does not expressly consent) that provision will be superseded by such Rule or Commission order.

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

24. **Modifications.** This Consent Decree cannot be modified without the advance written consent of all Parties.

25. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative.** Each Party represents and warrants to the other Parties that it has full power and authority to enter into this Consent Decree. Each person signing this Consent

Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

27. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.\

## FEDERAL COMMUNICATIONS COMMISSION

\_\_\_\_\_  
Travis LeBlanc  
Acting Chief, Enforcement Bureau

\_\_\_\_\_  
Date

KRXA, LLC

\_\_\_\_\_  
Harold S. Ginsberg  
Officer and LLC Member

\_\_\_\_\_  
Date

HAROLD S. GINSBERG, INDIVIDUALLY

\_\_\_\_\_  
Harold S. Ginsberg

\_\_\_\_\_  
Date